IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 30148 of 2006(L)

OS.61/2001 of MUNSIFF COURT, PERUMBAVOOR
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PETITIONER:

KURIACHAN, S/O. MATHAI,
POTTANATH HOUSE, NADUVILAN, VELOOR KARA,
PUTHENCRUZ VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENT:

SANKARAN ACHARI, S/O.S.AYYAKUTTY ACHARI,
MULLAMATTATHU HOUSE, VELOOR KARA,
PUTHENCRUZ VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SRI.G.RAJAGOPAL
SRI.THOMAS M.JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the affidavit filed by the petitioner herein in IA 2289/2005

Ext.P2 true copy of IA 1654/2006 petition to review the order filed by the petitioner.

Ext.P3 true copy of IA 1655/2006, petition for extension of time filed by the petitioner.

Ext.P4 true copy of the objection filed by the respondent herein.

Ext.P5 certified copy of the common order dated 18.9.2006 in IA No.1654/2006 and IA No.1655/2006 of the Munsiff's Court, Perumbavoor.

M.N.Krishnan, J.

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W.P(C).No.30148 of 2006

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Dated this the 16th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P5 order. The court below passed an ex parte decree and on an application filed by the defendant, set aside the ex parte decree on payment of costs of Rs.1,000/-. There was a time limit for paying the amount. An application was filed for enlargement of time and it was also allowed. Even then the defendant did not pay the amount and therefore the court dismissed the application. It is against the above facts the impugned applications were filed before the court below. The court on a consideration of the materials held that there are no sufficient grounds to entertain those applications and dismissed it.

2. The suit is one for recovery of possession on the strength of title. Even the court below at the first instance had exercised its discretion in favour of the defendant by allowing the

prayer, but on payment of costs. It is the non-payment of costs that had resulted in all subsequent proceedings. Considering the nature of the suit and at least the movement by the defendant in the right direction one cannot hold that he is grossly negligent so as to deprive him an opportunity to contest the case on merits. But he had dragged the plaintiff to this Court as well.

3. Therefore, taking into consideration all these aspects, I allow the Writ Petition and set aside Ext.P5 order and direct the court below to set aside the ex parte decree on payment of costs of Rs.1,500/- which is to be paid on or before 13.11.2007. If the amount is paid or deposited within that time, the court below shall restore the suit back to file and dispose of the matter as expeditiously as possible,within a time frame of four months. If the amount is not paid within the time stipulated above, the Writ Petition shall stand dismissed.

M.N.Krishnan,
Judge.

ess 17/10